

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 27, 2011

v

RICHARD WALTER LAJDZIAK,

Defendant-Appellant.

No. 295361
Oakland Circuit Court
LC No. 2009-225325-FH

Before: WHITBECK, P.J., and ZAHRA and FORT HOOD, JJ.

PER CURIAM.

This is an appeal arising from Defendant Richard Walter Lajdziak's convictions of possession of less than 25 grams of methadone¹ and possession of a firearm in commission of a felony.² Police arrested Lajdziak after they executed a search warrant on his house and discovered a large amount of marijuana, two firearms, and a small amount of methadone. Lajdziak was charged with one count of possession with intent to deliver marijuana,³ possession of methadone,⁴ and two counts of felony firearm.⁵ A jury found Lajdziak guilty, and the trial court sentenced him to two years in jail for the two felony firearm charges and consecutive six-month sentences for the marijuana and methadone charges. Lajdziak appeals as of right the methadone conviction and the corresponding felony firearm conviction. We affirm.

I. FACTS

In February 2009, five officers for the Oakland County Narcotics Enforcement Team (NET) executed a search warrant at a house in Groveland Township in Oakland County,

¹ MCL 333.7403(2)(a)(v).

² MCL 750.227b.

³ MCL 33.7401(2)(d)(iii).

⁴ MCL 333.7403(2)(a)(v).

⁵ MCL 333.750.227b.

Michigan. The officers entered the home and secured the residents, including Lajdziak, in the living room.

Detective Michael Miles serves as a member of NET as a narcotics officer. He testified that, after they secured the occupants of the house in the living room, he searched the basement. After searching the basement, Detective Miles then searched the southeast corner bedroom of the residence, where he found clothing belonging to a male occupant and other items indicating that the bedroom was occupied by a male. Also, while searching the bedroom, Detective Miles found two guns between the mattress and the frame of the bed closest to the south wall. Both of the weapons were loaded and in plastic bags. One was a .22-caliber Baretta and the other was a .38-caliber Colt revolver.

Detective Miles also used a police dog while searching the southeast corner bedroom, which Lajdziak later confirmed was his bedroom. The dog raised alerts as to the presence of drugs in three areas. First, the dog alerted to the nightstand next to the bed. Then, the dog alerted to the T.V. stand in the bedroom where Detective Miles found “three good-sized bags of marijuana.” Lajdziak later confirmed that this was his marijuana. The parties stipulated to the laboratory report, which indicated that the substance was actually marijuana. The dog also alerted to a triple beam scale at the foot of the bed in the southeast bedroom. The scale was in a black container, which also contained three plastic bags, marijuana residue, and a piece of tape.

Detective Michael Reeves was also part of the NET that searched the house. At trial, the prosecution qualified him as an expert in the area of narcotics trafficking. He testified that, after securing the house, he read Lajdziak his *Miranda*⁶ rights and asked if he was willing to waive his rights. Lajdziak signed a waiver of his rights. After Lajdziak waived his rights, Detective Reeves asked where Lajdziak got the marijuana that the NET found in the house, and Lajdziak indicated that he got it from a friend on the east side of Detroit. He further stated that he sold the marijuana to a few people and that he provided the marijuana to the other residents of the house. He also indicated that his girlfriend, Deborah Donovan, lived with him but had her own bedroom, which she confirmed. He also stated that Donovan’s brother, Steven Donovan, and his wife, Lana Sanders-Donovan, lived in the basement.

Detective Reeves asked Lajdziak why he had not mentioned the two handguns that Detective Miles found, and Lajdziak said that he assumed that the police already knew about the guns because they were registered. Lajdziak then indicated that there was a third gun in the “desk or a dresser type piece of furniture in the dining room area of the home” and that the gun would be an Uzi.

Sergeant Dwayne Warner searched the desk that Lajdziak indicated, and he found two leather cases in the bottom right-hand drawer of the desk. One of the cases contained what appeared to be an assault rifle, and the other contained documents and paperwork. Sergeant Warner recalled that he opened the desk drawer using a key that “one of the homeowners” gave

⁶ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

to him. He was unable to recall which of the homeowners gave him the key. Lajdziak also informed the officers that they would find methadone in the desk, which they found in a biohazard baggie. When he was asked if he had a prescription for the methadone, Lajdziak admitted to Detective Reeves that he did not.

Detective Reeves could not recall if keys were needed to open the drawer. Later, he was asked to use his report to refresh his recollection regarding the keys. After viewing his report, Detective Reeves recalled that he attained the keys and unlocked the drawer where the Uzi was found. He believed it was Lajdziak who informed him where to get the keys.

Detective Reeves asked Lajdziak if he would like to give a written statement. Detective Reeves testified that he never tells a suspect what to write in the written statement. Detective Reeves testified that Lajdziak's statement, in his own writing, indicated that he admitted to smoking marijuana and selling it in small quantities at times. Lajdziak also indicated that he got the marijuana from a friend in Detroit. But he declined to tell the police the name of the friend from whom he got the marijuana.

After the prosecution rested, Lajdziak moved for a directed verdict. He argued that the prosecutor presented insufficient evidence with regard to the methadone and the Uzi because neither of the officers could recall who gave them the key to the desk. In response, the prosecution responded that the key was in the house and that the methadone was not in a locked drawer. Further, the prosecution asserted that, even without the testimony concerning who provided the key, the jury could find that Lajdziak exercised dominion and control over the contraband. The trial court denied Lajdziak's motion.

The trial court then asked Lajdziak how his expert, Joseph Bruce, would assist his case. Lajdziak explained that Bruce would testify regarding the standard operating procedure of police with respect to taking statements during drug arrests. Lajdziak explained that Bruce's testimony could bear on the credibility of the officers that testified. Lajdziak clarified that he believed Detective Reeves was lying with regard to the statements concerning the methadone during the search. Lajdziak asserted that his personal written statement did not mention methadone and that he did not sign off on it. However, the record indicated that Lajdziak signed the bottom of his statement. While Lajdziak's statement did not mention the methadone, the police report did. The trial court ruled that it would not allow Bruce's testimony because it would not assist the trier of fact in determining a fact in issue.

Following closing arguments and jury instructions, after approximately 30 minutes of deliberation, the jury returned a verdict of guilty as charged to all four counts. On September 1, 2009, the trial court sentenced Lajdziak to six months in the Oakland County Jail for the marijuana and methadone convictions, and two years in the Michigan Department of Corrections on the felony firearm counts. The felony firearm sentences were to run consecutively to the drug sentences. Lajdziak now appeals.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Lajdziak argues that the prosecution presented insufficient evidence to sustain his conviction for possession of methadone. According to Lajdziak, his mere presence at the location of the drugs did not establish constructive or actual possession of the methadone.

This Court reviews de novo insufficiency of the evidence claims.⁷ When reviewing a sufficiency of the evidence claim, this Court views the evidence in the light most favorable to the prosecution and considers whether there was sufficient evidence to allow a rational trier of fact to find the defendant guilty beyond a reasonable doubt.⁸ However, this Court does not interfere with a jury's resolution of credibility disputes.⁹

B. LEGAL STANDARDS

In reviewing a sufficiency of the evidence claim, a reviewing court must determine whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt.¹⁰ Due process requires that a verdict be supported by legally sufficient evidence on every element of the crime.¹¹ The element of possession requires a proof of "dominion or right of control over the drug with knowledge of its presence and character."¹² "Possession may be either actual or constructive, and may be joint as well as exclusive."¹³ "[C]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband."¹⁴

C. APPLYING THE STANDARDS

Lajdziak relies on *People v Wolfe*¹⁵ to show that his presence at the house was not sufficient to show that he had possession of the methadone. Lajdziak's argument is without

⁷ *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

⁸ *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

⁹ *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

¹⁰ *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

¹¹ *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992).

¹² *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003) (quotations and citations omitted).

¹³ *People v Fetterly*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

¹⁴ *Wolfe*, 440 Mich at 521.

¹⁵ *Id.*

merit. In *Wolfe*, the defendant was charged with possession of cocaine after police executed a search warrant on an apartment that he and five others were located.¹⁶ The drugs were not directly on the defendant.¹⁷ The police found a 12-gauge shotgun as well as numerous packets of crack-cocaine.¹⁸ On appeal to the Michigan Supreme Court, the defendant asserted that the element of possession was not sufficient to sustain his charge. He explained that his mere presence at the apartment that contained the drugs was not related to any possession of or intent to sell the drugs.¹⁹

The Michigan Supreme Court ruled that the evidence produced at trial showed that the defendant constructively possessed the cocaine.²⁰ First, the Supreme Court noted that a person's mere presence at a location where drugs are found is insufficient to prove constructive possession.²¹ However, the factors surrounding the defendant led the Supreme Court to find a link between him and the drugs.²² The fact that the defendant controlled the premises, attempted to conceal the narcotics, and was working with other drug dealers constructively showed that he had possession.²³ The Supreme Court ruled that, when there is not actual possession, evidence that a defendant "had the right to exercise control of the cocaine and knew it was present" is sufficient for constructive possession.²⁴

This case is similar to *Wolfe*. While Lajdziak attempts to use *Wolfe* to prove that he did not possess of the methadone, the standards in *Wolfe* actually show that he had constructive possession of it. Here, the police found proof of Lajdziak's residing at the house containing the methadone. Further, Lajdziak knew that there were drugs and guns in the drawer. Also, Detective Reeves testified that Lajdziak helped him get the key to open the drawer containing the methadone. These circumstances indicate that Lajdziak obviously knew the methadone was present because he told the officers where it was before they even found it. The circumstances also prove that Lajdziak could easily exercise control over the methadone because it was located in his residence and he had access to the drawer that it was located in. Also, the fact that Lajdziak admitted to using and selling drugs suggests that there was a nexus between him and any contraband found in his house.

¹⁶ *Id.* at 511.

¹⁷ *Id.* at 511-512.

¹⁸ *Id.*

¹⁹ *Id.* at 517.

²⁰ *Id.* at 520.

²¹ *Id.*

²² *Id.* at 522.

²³ *Id.* at 522-523.

²⁴ *Id.* at 520.

Accordingly, we conclude that there was sufficient evidence to convict Lajdziak of possession of methadone because the circumstances surrounding the search of his house indicate that he had constructive possession of it.

III. ADDITION OF NEW CHARGE

A. STANDARD OF REVIEW

Lajdziak argues that the prosecutor's addition of the methadone charge and corresponding felony firearm charge violated his right to a preliminary examination on both charges. According to Lajdziak, the defense was unfairly prejudiced because it only had one week to prepare for the new charges.

This Court reviews a trial court's decision to grant or deny a motion to amend information for an abuse of discretion.²⁵ An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes.²⁶

B. LEGAL STANDARDS

MCL 767.76 provides that "[t]he court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence." MCR 6.112(H) also provides that "[t]he court before, during, or after trial may permit the prosecutor to amend the information unless the proposed amendment would unfairly surprise or prejudice the defendant." "[A]ll laws applying to prosecutions on indictments also apply to prosecutions by information."²⁷

"An information shall not be filed against any person for a felony until such person has had a preliminary examination therefor, as provided by law, before an examining magistrate, unless that person waives his statutory right to an examination."²⁸ "However, the information 'is not predicated upon the complaint or the examination upon the warrant issues[.]'"²⁹ "[A]n examining magistrate may examine not only the truth of the charge in the complaint, but also other pertinent matters related to the charge."³⁰ "The magistrate is not bound by the limitations of the written complaint."³¹

²⁵ *People v McGee*, 258 Mich App 683, 686-687; 672 NW2d 191 (2003).

²⁶ *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

²⁷ *McGee*, 258 Mich App at 687, citing MCR 6.112(H).

²⁸ *People v Hunt*, 442 Mich 359, 362-363; 501 NW2d 151 (1993), quoting MCL 767.42(1).

²⁹ *Id.* at 363, quoting *People v Kahler*, 93 Mich 625, 627; 53 NW 826 (1892).

³⁰ *Id.*

³¹ *Id.*

A prosecutor may add a charge to a complaint as long as the prosecutor shows probable cause, at a preliminary exam, that the defendant committed the crime.³² In *People v Hunt*, the defendant was charged with gross indecency between males.³³ At the preliminary examination, the victim testified that the defendant sexually assaulted him, which included sexual penetration.³⁴ The prosecutor was unaware of this information until the preliminary examination because the report said there was only sexual contact.³⁵ After the examination, the prosecutor moved to amend the information to charge third-degree criminal sexual conduct.³⁶

On appeal, the Michigan Supreme Court ruled that the trial court should allow the amendment.³⁷ The Supreme Court held that a prosecutor must show probable cause in order to have a proper bindover, authorizing the prosecution to file an information against a defendant.³⁸ The Supreme Court made its ruling by first examining the facts brought out at the preliminary examination and comparing them with the requirements of the new charge sought.³⁹ The Supreme Court held that prosecution showed the required elements of the new charge during the preliminary examination.⁴⁰ Therefore, the Supreme Court held that the prosecution showed probable cause for a bindover of the amended charge.⁴¹

After ruling that there was sufficient proof presented to support a bindover on the new charge, the Supreme Court analyzed whether the amendment would have caused “unacceptable prejudice to the defendant because of unfair surprise, inadequate notice, or insufficient opportunity to defend.”⁴² The Supreme Court explained that these factors are relevant to give the defendant a fair opportunity to meet the charges against him.⁴³ The Supreme Court ruled that adding the new charge did not impose an unfair burden on the defendant because there was no indication that the defense counsel’s questioning would have changed had the new charge been

³² *Id.* at 362.

³³ *Id.* at 360.

³⁴ *Id.*

³⁵ *Id.* at 363-364.

³⁶ *Id.* at 361.

³⁷ *Id.* at 365.

³⁸ *Id.* at 362.

³⁹ *Id.* at 363-364.

⁴⁰ *Id.* at 364.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

initially brought.⁴⁴ The Supreme Court also ruled that there was no evidence to suggest that the overall defense would have changed due to the added charge.⁴⁵

C. APPLYING THE STANDARDS

Here, two weeks before trial, the prosecution moved to add the charge of possession of less than 25 grams of methadone along with the corresponding additional count of felony firearm. The trial court granted the motion over Lajdziak's objection.

This Court must first determine whether there was proper information at the preliminary examination to show probable cause for the amended charge of possession of less than 25 grams of methadone and the corresponding felony firearm charge.⁴⁶ A defendant is in violation of MCL 333.7403(2)(a)(v), if he possessed a controlled substance of less than 25 grams without a valid prescription. At the preliminary examination, Detective Reeves testified that he found "some methadone in a zip-lock style baggie in a desk in the dining room." He went on to explain that an "Uzi weapon" was also found in the same drawer as the methadone. Detective Reeves's testimony at the preliminary hearing suggests that there was probable cause for the subsequent methadone charge against Lajdziak. Further, because Detective Reeves's testimony also indicated that there were guns in the house, there was probable cause for the corresponding felony firearm charge.⁴⁷

Having concluded that the prosecution showed probable cause at the preliminary hearing to satisfy the methadone and felony firearm charges, the next step of the analysis is to determine whether adding these charges caused unacceptable prejudice to Lajdziak because of unfair surprise, inadequate notice, or insufficient opportunity to defend.⁴⁸ In this case, similar to *Hunt*, there is no evidence that shows prejudice against Lajdziak by allowing the amended charges. Lajdziak's only argument on this issue appears to be that he only had one week to prepare for the new charges. However, his overall defense against the possession charges was that he did not possess the drugs because they could have belonged to the others in the house. Lajdziak also argued that the police officers did not perform a proper investigation. These arguments were made with regard to all charges brought against Lajdziak. Therefore, Lajdziak's defense was not unfairly prejudiced because his arguments would not have changed regardless of the amended charges.

We conclude that the trial court did not err in allowing the amended charges because there was sufficient evidence at the preliminary examination to show probable cause that the

⁴⁴ *Id.* at 365.

⁴⁵ *Id.*

⁴⁶ See *id.* at 362.

⁴⁷ MCL 750.227b.

⁴⁸ See *Hunt*, 442 Mich at 364.

methadone and corresponding felony firearm charges could be brought. Allowing the two charges did not unfairly prejudice Lajdziak's defense.

IV. ADMISSION OF EXPERT TESTIMONY

A. STANDARD OF REVIEW

Lajdziak argues that Joseph Bruce's expert testimony was necessary to present a proper defense. He asserts that Bruce's testimony would have shown that Detective Reeves was lying about Lajdziak saying where the methadone was located.

This Court reviews a trial court's ruling on admission of evidence, including relevancy, for an abuse of discretion.⁴⁹ Similarly, this Court reviews a trial court's decision regarding qualifying an expert witness and the admissibility of the expert testimony for an abuse of discretion.⁵⁰ An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes.⁵¹

B. LEGAL STANDARDS

Generally, all relevant evidence is admissible at trial.⁵² "Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."⁵³ However, even if evidence is relevant, it may be excluded if "its probative value is *substantially* outweighed by the danger of *unfair* prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."⁵⁴

In *People v Crawford*, the Michigan Supreme Court held that evidence is relevant if two material components are present: materiality and probative value.⁵⁵ The Supreme Court went on

⁴⁹ *People v Adair*, 452 Mich 473, 485; 550 NW2d 505 (1996); *People v Triplett*, 68 Mich App 531, 536; 243 NW2d 665 (1976).

⁵⁰ *People v Murray*, 234 Mich App 46, 52; 593 NW2d 690 (1999).

⁵¹ *Woodard*, 476 Mich at 557.

⁵² MRE 402; *People v Starr*, 457 Mich 490, 497; 577 NW2d 673 (1998).

⁵³ MRE 401.

⁵⁴ *Starr*, 457 at 498, quoting MRE 403 (emphasis by *Starr*).

⁵⁵ *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998).

to emphasize that “[i]f the evidence is offered to help prove a proposition which is not a matter in issue, the evidence is immaterial.”⁵⁶

C. APPLYING THE STANDARDS

In this case, Lajdziak wanted Joseph Bruce, a retired police officer, to testify as an expert on standard police protocol when dealing with drug arrests. Lajdziak argued that Bruce’s testimony would discredit the testimony of Detective Reeves, proving that Detective Reeves was lying.

The testimony offered by Bruce was immaterial to this case because his testimony would not have helped the trial court’s ruling on the methadone or felony firearm charges in question. Bruce’s testimony would have merely alluded to the standards that he was accustomed to for drug arrests during his career at a different police station. Moreover, allowing Bruce’s testimony would have created confusion, undue delay, and unfair prejudice in this case. Therefore, the trial court properly excluded this evidence.

The trial court did not deny Lajdziak his right to present a proper defense because the testimony offered by Joseph Bruce was not relevant, it would have been immaterial, and its probative value would have been substantially outweighed by its risk of unfair prejudice.

We affirm.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood

⁵⁶ *Id.*, quoting McCormick, Evidence (4th ed.), § 185, 773.